

State of California
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation

**NOTICE OF MODIFICATION TO TEXT OF
PROPOSED REGULATIONS**
(Adoption of Emergency Regulations)

Subject Matter of Regulations: Medical Provider Networks

TITLE 8, CALIFORNIA CODE OF REGULATIONS
SECTIONS 9767.1 – 9767.14

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 59, 133, and 4616 proposes to modify the text of the following proposed amendments to Title 8, California Code of Regulations:

Section 9767.1	Medical Provider Networks - Definitions
Section 9767.3	Application for a Medical Provider Network Plan
Section 9767.4	Cover Page for Medical Provider Network Application
Section 9767.5	Access Standards
Section 9767.6	Treatment and Change of Physicians Within MPN
Section 9767.7	Second and Third Opinions
Section 9767.8	Modification of Medical Provider Network Plan
Section 9767.9	Transfer of Ongoing Care into the MPN
Section 9767.10	Continuity of Care Policy
Section 9767.12	Employee Notification

**PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION
OF WRITTEN COMMENTS**

Members of the public are invited to present written comments regarding these proposed modifications. **Only comments directly concerning the proposed modifications to the text of the regulations will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Kathleen Llemos, Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than **5:00 p.m. on Thursday, February 24, 2005**. Written comments may be submitted by facsimile transmission (FAX), addressed to the contact

person at (415) 703-4720. Written comments may also be sent electronically (via e-mail), using the following e-mail address: dwcrules@hq.dir.ca.gov.

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text and modified text with modifications clearly indicated, and the entire rulemaking file, are currently available for public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 455 Golden Gate Avenue, 9th Floor, San Francisco, California.

Please contact the Division's regulations coordinator, Ms. Kathleen Llemos, at (415) 703-4600 to arrange to inspect the rulemaking file.

The specific modifications proposed include changes to the text of the proposed amendments Title 8, California Code of Regulations:

Section 9767.1	Medical Provider Networks - Definitions
Section 9767.3	Application for a Medical Provider Network Plan
Section 9767.4	Cover Page for Medical Provider Network Application
Section 9767.5	Access Standards
Section 9767.6	Treatment and Change of Physicians Within MPN
Section 9767.7	Second and Third Opinions
Section 9767.8	Modification of Medical Provider Network Plan
Section 9767.9	Transfer of Ongoing Care into the MPN
Section 9767.10	Continuity of Care Policy
Section 9767.12	Employee Notification

DOCUMENTS SUPPORTING THE RULEMAKING FILE

Comments from various interested parties concerning the Division's proposed changes have been added to the rulemaking file.

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for 45-Day Comment Period:

Deletions from the codified emergency regulatory text are indicated by strike-through, thus: ~~deleted language~~.

Additions to the codified emergency regulatory text are indicated by underlining, thus: underlined language.

Proposed Text Noticed for This 15-Day Comment Period on Modified Text:

Deletions from the regulatory text, as proposed on November 15, 2005, are indicated by double strike-through, thus: ~~~~deleted language~~~~.

Additions to the regulatory text, as proposed on November 15, 2004, are indicated by a double underline, thus: added language.

SUMMARY OF PROPOSED CHANGES

Modifications to Section 9767.1 Medical Provider Networks - Definitions

Subdivision (a)(6), the definition of “Employer,” is amended to include “a group self-insurer pursuant to Labor Code section 3700(b) and as defined by Title 8, California Code of Regulations, section 15201(s).” Some self-insured employers are certified as a group of self-insurers by the Office of Self-Insurance Plans. This change will clarify that these self-insured employers may apply to establish a MPN.

Subdivision (a)(18), the definition of “Primary treating physician,” is clarify by the deletion of the words “MPN applicant’s.” This modifying phrase was not only unnecessary but also inaccurate.

Modifications to Section 9767.3 Application for a Medical Provider Network Plan

Subdivision (d)(8)(C) is modified to include the sentence: “The MPN applicant shall confirm that the contractual agreement is in compliance with Labor Code section 4609.” This sentence is added to prevent the MPN networks and MPN applicants from improperly selling, leasing, or transferring health care provider’s contracts.

Subdivision (d)(8)(G) is amended to state: “Describe how the covered employees who are authorized by the employer to temporarily working or travel for work outside of the MPN’s geographical service area will be provided with medical treatment and how injured employees who are no longer employed by the employer and permanently resides outside the MPN geographical service area will be provided with medical treatment.” The changes more closely track the language set forth in section 9767.5 regarding access and require the MPN applicant to specify how medical treatment will be provided to employees temporarily outside the MPN geographical area and to former employees who do not reside within the MPN.

Subdivision (d)(8)(H) is amended to replace the phrase “describe how these services will be made available to the covered employees” with “affirm that referrals will be made to services outside the MPN.” The change is made to clarify that if ancillary services are not within the MPN, then the MPN is required to refer the employee to ancillary services outside the MPN.

Modifications to Section 9767.4 Cover Page for Medical Provider Network Application

Section 4 is amended to include a check-off box if the application is by a group self-insurer as the definition of an employer has been amended to include a group self-insurer.

A typographical error is corrected on line 8.

Section 11 is amended to require the name of the organization for the DWC liaison. This information is necessary in order to properly address correspondence to the DWC liaison.

Modifications to Section 9767.5 Access Standards

Subdivision (e) is amended to state: “(e) The MPN applicant shall have a written policy for arranging or approving medical care if ~~an~~ for: employee (1) employees who are authorized by the employer to ~~is~~ temporarily working or traveling for work outside the service area when the need for medical care arises; and (2) employees who are no longer employed by the employer and permanently reside outside the MPN geographical service area.” The changes were made to clarify the requirement for the written policy, to include former employees who permanently reside outside the MPN geographical area, and to correct syntax.

Subdivision (g) is amended to state: “(g) For non-emergency services, within one day after the employee files a claim form under Labor Code section 5401, the MPN applicant shall authorize the provision of all treatment as required by Labor Code section 5402. The MPN applicant shall ensure that an appointment for initial treatment is available within 3 business days of the MPN applicant’s receipt of a request for treatment within the MPN.” The added language clarifies that the MPN applicant must authorize the provision of all medical treatment within one day after the employee files a claim form.

Modifications to Section 9767.6 Treatment and Change of Physicians Within MPN

Subdivisions (b) and (d) are amended to replace the word “authorize” with “provide for” for clarification. Some members of the public reported that they understood this section to mean that the treatment should be authorized via the utilization review process as opposed to a requirement to provide medical treatment to the injured worker.

Modifications to Section 9767.7 Second and Third Opinions

Subdivision (a) is amended to replace the words “pursuant to section 9767.6” with “within the MPN.” The change is made to make the subdivision easier to understand.

Subdivisions (b) and (d) are amended to state the “the employee may notify the person designated by the employer or insurer either in writing or orally.” This language is added to clarify that either oral or written notice is acceptable. Subdivisions (b) and (d) are also amended to include the phrase, “and inform the employee of his or her right to request a copy of the medical records that will be sent to the second opinion physician.” This phrase is added so that the employee will be informed of his or her right to request copies of the medical records sent to the second or third physicians by the employer or insurer.

Subdivision (f) is amended to include the sentence: “The employer or insurer shall permit the employee to obtain the recommended treatment within the MPN.” This sentence is added to clarify and ensure that the employer permits the employee to obtain the treatment recommended by the second or third physician within the MPN.

Modifications to Section 9767.8 Modification of Medical Provider Network Plan

Subdivision (e) is amended to include the sentence: “The Administrative Director shall approve or disapprove a plan modification based on the requirements of Labor Code section 4616 et seq. and this article.” This sentence is added to state the standard for the approval or disapproval.

Subdivision (j), the mandatory form, is amended to include a check-off box if the notice is by a group self-insurer as the definition of an employer has been amended to include a group self-insurer.

A typographical error is corrected on line 8.

The form is also amended to require the name of the organization for the DWC liaison. This information is necessary in order to properly address correspondence to the DWC liaison.

Modifications to Section 9767.9 Transfer of Ongoing Care into the MPN

Subdivision (d) is amended to replace the word “that” with “if.” This changes the meaning of the sentence so that the employer or insurer will not need to notify the employee if the physician becomes a MPN provider but the employer or insurer is not requiring the treatment to be within the MPN.

Subdivision (f) is amended to replace the phrase “a language understandable to the employee” with the phrase “English and Spanish and use layperson’s terms to the maximum extent possible.” This change clarifies that the language requirements are the same for this notification as for the other MPN notifications and that the determination regarding the employee’s medical condition be written using layperson’s terms so that the employee will understand the determination.

Modifications to Section 9767.10 Continuity of Care Policy

Subdivision (b), which states, “An acute condition, as referred to in Labor Code section 4616.2, shall have a duration of not more than 30 days,” was added to this section. The subdivision was added to interpret and define the term “a limited duration” as used in Labor Code section 4616.2.

Modifications to Section 9767.12 Employee Notification

Subdivision (a) was amended to delete the words “as required by Labor Code section 4616.3,” because that reference was inaccurate. The words “30 days” were added to state that the initial notification must be sent 30 days prior to the implementation of an approved MPN. This clarifies that the 30 day requirement is consistent with subdivision (c), which requires that employees be notified 30 days prior to a change of the medical network provider.

Subdivision (a)(1) was amended to include the sentence, “The employer or insurer shall provide a toll free telephone number if the MPN geographical service area includes more than one area code.” This requirement will allow employee access to the MPN contact without requiring the employees to bear the cost of a long distance telephone charge.

Subdivision (a)(5) was added. It requires the employer or insurer to inform the employees: “How to access treatment if the employee is authorized by the employer to temporarily work or travel for work outside the MPN’s geographical service area or if the injured employee is no longer employed by the employer and permanently resides outside the MPN geographical service area.” This language matches the access requirement of section 9767.5. The information is necessary to the MPN employees so that they will know what to do if they are injured while

temporarily working or traveling for work outside the MPN geographical service area or if they are a former employee who permanently resides outside the MPN geographical service area.

Subdivision (a)(9) was amended to state: “(9) How to obtain a referral to a specialist within the MPN or outside the MPN, if needed.” The added language is necessary because the employee may need to obtain a specialist outside the MPN if the injury requires a specialist that is not offered within the MPN.